

John E. Selent
502-540-2315
john.selent@dinslaw.com

March 27, 2008

RECEIVED

MAR 28 2008

PUBLIC SERVICE
COMMISSION

HAND-DELIVERY

Hon. Stephanie L. Stumbo
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: Thomas Dean Stauffer v. Brandenburg Telephone Company, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2007-00399

Dear Ms. Stumbo:

I have enclosed for filing in the above-styled case the original and ten (10) copies of Brandenburg Telephone Company's Notice of Filing with attachments.

We direct the Commission's attention specifically to Item No. 4, Plaintiff's Response to Defendants' Motion to Dismiss.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

John E. Selent

JES/bct

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 28 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

THOMAS DEAN STAUFFER)
)
COMPLAINANT)
)
v.)
)
BRANDENBURG TELEPHONE COMPANY)
)
DEFENDANT)

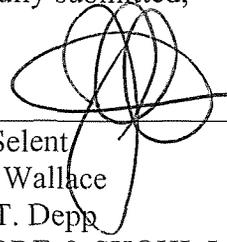
CASE NO. 2007-00399

NOTICE OF FILING

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, hereby files the following pleadings and transcript of hearing from the Small Claims Court of Meade County Case No. 08-S-049:

1. Small Claims Complaint;
2. Counterclaim of Defendant;
3. Motion to Dismiss filed by Defendants;
4. Response to Motion to Dismiss by Plaintiff; and
5. Transcribed copy of hearing held 3/25/08.

Respectfully submitted,



John E. Selent
Holly C. Wallace
Edward T. Depp
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
(502) 540-2370
(502) 585-2207 (fax)

Counsel to Brandenburg Telephone Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed and served via first class United States mail, sufficient postage pre-paid on this 21st day of March, 2008 upon the following:

Thomas Dean Stauffer
420 Blevins Road
Payneville, KY 40157



Counsel to Brandenburg Telephone Company

IN SMALL CLAIMS COURT OF MEADE COUNTY

CASE NO. 08-S-049

PLAINTIFF: BRANDENBURG TELEPHONE COMPANY

vs.

INDEX OF PLEADINGS AND TRANSCRIPT

DEFENDANTS: ILISSA L. STAUFFER
DAVID D. STAUFFER

* * * * *

1. 2/12/08 Small Claims Complaint
2. 3/11/08 Counter-Claim by Defendant
3. 3/11/08 Motion to Dismiss by Defendant
4. Plaintiff's Response to Dismiss
5. 3/25/08 Transcript of Hearing

AOC-175 Doc. Code: COM
Rev. 3-06 01/15/2008 06.36 pm
Page 1 of 2 Ver. 1.01
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
KRS 24A.260



SMALL CLAIMS COMPLAINT

Case No. _____
Court District Small Claims
County Meade

Assigned Court Date: _____

Plaintiff: **Company** **Individual** (for individual, enter first, middle and last names)

Name BRANDENBURG TELEPHONE COMPANY

Address 200 TELCO DRIVE

BRANDENBURG Kentucky 40108

Plaintiff's Attorney (if any): **Firm** **Individual**

Name DINSMORE & SHOHL LLP, attn: John Selent

Address 1400 PNC PLAZA

500 WEST JEFFERSON STREET

LOUISVILLE Kentucky 40202

Defendant: **Company** **Individual** (for individual, enter first, middle and last names)

Name ILISSA LOUISE STAUFFER DAVID STAUFFER

Address 420 BLEVINS ROAD 400 BLEVINS ROAD

PAYNEVILLE, KY 40157 PAYNEVILLE, KY 40157

NOTICE TO EACH DEFENDANT - READ CAREFULLY

You are being sued in Small Claims Court by the Plaintiff shown above. The judge has not made a decision in this case. **You are to appear in court** on the date shown on the attached summons to tell your side of the dispute. **If you fail to appear in court** on the date shown on the attached summons, a court judgment may be taken against you for the money or property demanded in the **Claim** on page 2 of this document. This could lead to garnishment of your paycheck and/or sale of your home or other belongings (unless protected by law) to satisfy the judgment. **If you have questions or need assistance, consult the Small Claims information pamphlet (P-6) or call an attorney.**

**WARNING REGARDING JURY TRIAL
(KRS 24A.320; 29A.270)**

There are no jury trials in Small Claims Court. If the amount in controversy exceeds \$250, you may have a jury trial by going into District Civil Court. However, the simplified and informal procedures used in Small Claims Court do not apply in District Civil Court. **If you request a jury, you will be required to pay an additional fee.**

To the Plaintiff: If you want a jury trial, file your claim in District Civil Court instead of Small Claims Court.

To the Defendant: If you want a jury trial, **you must notify** the court clerk in writing at least **seven (7) days** before the court date listed on the attached summons to have the case transferred from Small Claims Court to District Civil Court.

Clerk _____

Address _____

Phone No. _____

Plaintiff's Name Brandenburg Telephone Company

CLAIM

1. **Plaintiff claims Defendant:**

BREACHED A CONTRACT SHE HAD ENTERED WITH BRANDENBURG TELEPHONE COMPANY. DEFENDANT PROMISED TO PAY FOR TELEPHONE SERVICES PROVIDED BY BRANDENBURG TELEPHONE, BUT, AS OF THE DATE OF THIS FILING, HAS AN OUTSTANDING BALANCE OF \$228.37. DEFENDANT HAS NOT INDICATED ANY INTENTION TO PAY THE OUTSTANDING BALANCE.

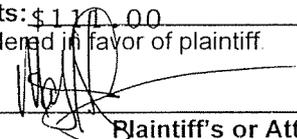
(MORE DETAILS ARE PROVIDED IN THE ATTACHED SUMMARY.)

NOTE TO PLAINTIFF: Only the Complaint will be served on the Defendant. Attachments **WILL NOT** be served.

2. Plaintiff claims the sum of \$ 228.37 from the defendant for damages incurred as a result of the above complaint. (The **jurisdictional authority** of Small Claims Court is **\$1,500.00, exclusive of interest and costs.** KRS 24A.230).

3. **Plaintiff also claims the following court costs:** \$111.00
Court costs will be added to any judgment rendered in favor of plaintiff.

Date: February 12, 2008

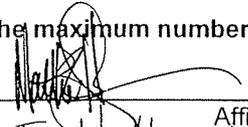


Plaintiff's or Attorney's Signature

SMALL CLAIMS AFFIDAVIT

KRS 24A.250(1) reads as follows: *No party shall file more than twenty-five (25) claims in any one (1) calendar year in the Small Claims Division of any District Court in the Commonwealth. Any business engaged in trade or commerce shall be entitled to the maximum number of claims allowed under this section for each established location in the district that has been engaged in trade or commerce for at least six (6) months. KRS 24A.250(4) exempts claims brought by city, county or urban-county governments from the limit on the number of claims that may be filed in a calendar year.*

I swear (or affirm) I have not brought more than the maximum number of claims allowed by KRS 24A.250.

Date: February 12, 2008 

Affiant's Signature

Subscribed and sworn to before me by Matthew J. Hallingstad
this 12 day of February, 2008 My Commission expires: 2/6/, 2009

Signature: Sheree B. Anderson
Title: Notary Public

DETAILED SUMMARY OF FACTS

On July 22, 2005, Ilissa Louise Stauffer signed an "Application for Service" with Brandenburg Telephone Company. (A copy of this application is attached as Exhibit 1.) By signing the application, she became the responsible party for the account associated with telephone number 270-496-4992 (the "Account") and "agree[d] to pay the rates as established [in the appropriate tariff] for [Brandenburg Telephone] service."

On February 23, 2006, David Stauffer became the primary responsible party on the Account when he signed an application for service. (A copy of this application is attached as Exhibit 2.) Ilissa Stauffer signed this application, as well, and, therefore, remained a responsible party on the Account. Both agreed, by signing the application, to pay the rates, as established in the appropriate tariff, for Brandenburg Telephone service.

On May 30, 2007, at the request of David Stauffer, the Account was disconnected.

At the time of the requested disconnection, the Account had an outstanding, already-billed, balance of \$166.30 (as of May 1, 2007). Subsequent to disconnection, additional charges of \$62.07 were billed to the Account for services rendered prior to disconnection.

No portion of the \$228.37 (\$166.30 + \$62.07) detailed above has ever been paid. As a result, as of the date of filing of this small claims complaint, there remains an outstanding balance on the account in the amount of \$228.37.

As responsible parties, both defendants are jointly and severally liable for the entire outstanding balance.

APPLICATION FOR SERVICE

EXCH Pyul DATE 7/22/05 TEL NO 496-4992

NAME Stauffer, Flissa

ADDRESS 400 Blewins Rd

INITIAL CLASS OF SERVICE	MONTHLY RATE
<u>R1</u>	

DIRECTORY LISTING

NAME Stauffer, F.

SOCIAL SECURITY # _____

CLASSIFIED SECTION AS _____

INITIAL EQUIPMENT		
CABLE	TERM	PR.

The undersigned makes application for telephone service of the kind and class as described above, and agrees to pay the rates as established for such services; and further agrees to the rules and regulations as set forth in the exchange tariff, and to any general changes in the rules, regulations, tariffs or rates for such service. Any deposit made on the above service may be applied against the regulated or unregulated portion of the service with the regulated portion being applied first. This application becomes a contract when accepted in writing by the Telephone Company.

TAKEN BY Katuna Berkham

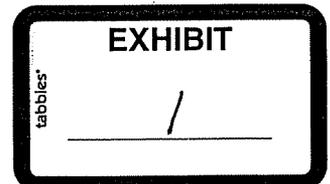
INDIVIDUAL: Flissa J. Stauffer

INDIVIDUAL: _____

BRANDENBURG TELEPHONE CO. INC.

APPLICANT

BY _____



APPLICATION FOR SERVICES
BRANDENBURG TELEPHONE COMPANY, INC.

EXCH. PYVL DATE 2/23/06 TEL NO. 496-4992
 NAME Stauffer, David
 ADDRESS 400 Blevins RD, Payneville, KY 40157
 INTERNET HIGH SPEED
 _____ 768K DSL

DIRECTORY LISTING

NAME David ~~Blevins~~ Stauffer SOCIAL SECURITY #
 CLASSIFIED _____ Ilissa
 SECTION AS _____ Stacy

BRANDENBURG TELECOM SERVICES

DIGITAL VIDEO

___ D.V. BASIC
 ___ D.V. DELUXE
 / ___ MOVIE CHANNEL _____
 (SPECIFY)
 ___ MOVIE PACKAGE _____
 (SPECIFY)

INTERNET HIGH SPEED

___ BASIC (128K)
 ___ REGULAR (256K)
 ___ ENHANCED (512K)
 ___ 1 MEG
 ___ 2 MEG

USERNAME
 _____ 6-14 CHRS
 PASSWORD

USE OF VIDEO

I understand that Brandenburg Telecom, LLC does not operate nor control the contents of the Video Providers in any way. I also understand that the use of and access to the content provided by BTLLC is the sole responsibility of the customer contracting for the service. I am aware that BTLLC makes available parental locking capabilities through BTLLC's customer provided remote control which gives parents the opportunity to control their children's viewing options.

The undersigned makes application for services of the kind and class as described, and agrees to pay the rates as established for such services; and further agrees to the rules and regulations as set forth in the exchange tariff, and to any general changes in the rules, regulations, tariffs or rates for such service. Any deposit made on the above service may be applied against the regulated or unregulated portion of the service with the regulated portion being applied first. This application becomes a contract when accepted in writing by Brandenburg Telephone Company.

INDIVIDUAL: David Stauffer
 INDIVIDUAL: Ilissa J Stauffer

TAKEN BY Susan A. Coche _____ APPLICANT
 BRANDENBURG TELEPHONE COMPANY, INC. BY _____

Individual: Amy M. Kelley

EXHIBIT
 2

AOC-185 Rev. 2-03 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.kycourts.net KRS 24A.290	Doc. Code: CC 02/21/2008 01:23 pm Ver. 1.01	 SMALL CLAIMS COUNTER-CLAIM	Case No. <u>08-S-049</u> Court <u>District Small Claims</u> County <u>Meade</u>
---	---	---	---

PLAINTIFF

Name: BRANDENBURG TELEPHONE COMPANY
 Address: 200 TELCO DR.

BRANDENBURG Kentucky 40108

VS.

Name: ILISSA LOUISE & DAVID DEAN STAUFFER

Address: 420 BLEVINS RD.
 400 BLEVINS RD.
 PAYNEVILLE

Kentucky 40157

2008 MAR 11 P 2:14
 MEADE CIR/DIST. COURT
 EVELYN D. MEDLEY, CLERK
FILED
DEFENDANT

1. Defendant claims Plaintiff:

Illegally threatened termination of phone service and actively harassed defendant over balances that are currently before the Kentucky Public Service Commission. Case Number 2007-00399. This law suit is proof of such harassment as Kentucky law considers this bill to be current until the Commission rules on the formal complaint. See 807 KAR 5:006 Section 11.

J. D. Tobin, Jr. of Brandenburg Telephone Company Has refused to acknowledge the authority of Kentucky Law, The Public Service Commission, and Denial of his motion to disconnect service. Furthermore he has tried to intimidate us by misrepresenting himself as an Attorney at Law.

Ilissa Stauffer is mentally disabled and the plaintiff has been served with copies of a Federal Judges ruling to the affect. This only seems to have caused the Plaintiffs to harass her all the more. She has already been institutionalized as a result of their harassment in August that resulted in the formal complaint filed with the PSC. We reserve the right to file a suit against the plaintiff for the August incident in a higher court. The damages we are asking for are for the constant harassment and threats to terminate our phone service illegally.

2. Defendant claims the following sum from Plaintiff for damages brought about by the above Complaint:

\$ 1,500.00, (amount not to exceed \$1,500.00, exclusive of interest and costs) plus interest in the amount of \$

3. Defendant also claims court costs.

Date: March 11, 2008

Ilissa Louise Stauffer
 Defendant's Signature

Instructions: This counter-claim shall be filed with the Clerk and a copy delivered to the Plaintiff at least five (5) days prior to the time of the hearing.

IN SMALL CLAIMS COURT OF MEADE COUNTY

FILED
CASE No. 08-S-049

PLAINTIFF: BRANDENBURG TELEPHONE COMPANY

2008 MAR 11 P 2:13

vs.

MEADE CIR/DIST. COURT
EVELYN D. HEDLEY, CLERK

DEFENDANTS: ILISSA L. STAUFFER
DAVID D. STAUFFER

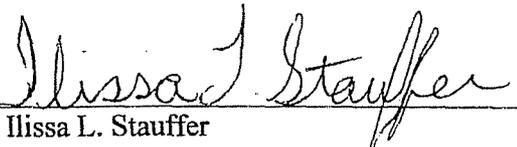
MOTION TO DISMISS

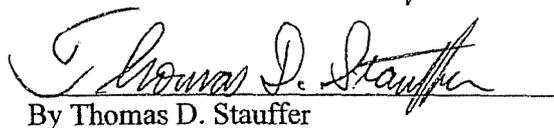
Comes the defendants with motion to dismiss as this bill is and has been before the Kentucky Public Service Commission as a formal dispute, case #2007-00399. It would be premature to obtain a judgement prior to the PSC's ruling on this case. Under 807 KAR 5:006 Section 11 Status of Customer Accounts During Billing Dispute. ...customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills. We Have been current and on time with all current billings subsequent to the September 11, 2007, filing of the formal complaint with the PSC.

Per Order Dated November 21, 2007, From the PSC Case No.2007-00399, page 4 Paragraph 1, The PSC. "...Maintains jurisdiction over Mr. Stauffer's other claims." Since under PSC regulations the disputed account is considered current, it is not subject to late fee or any other collection fees such as court costs.

Also the law suite is discriminatory in that it only sues the signees whose last name is Stauffer. It doesn't name Stacy Kelley who's signature is in evidence and who was responsible for all the long-distance charges.

Ilissa Stauffer is mentally disabled and unable to represent herself in court and can't afford an attorney and wishes that her husband, Thomas Stauffer, appear in her place.


Ilissa L. Stauffer


By Thomas D. Stauffer

BRANDENBURG TELEPHONE COMPANY

PLAINTIFF

v.

ILISSA L. STAUFFER
DAVID D. STAUFFER

DEFENDANTS

* * * * *

Plaintiff's Response to Defendants' Motion to Dismiss

Plaintiff Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, for its Response to the Motion to Dismiss filed by Defendants Ilissa L. Stauffer ("Ms. Stauffer") and David D. Stauffer, states as follows.

Statement of Facts

1. The sole claim made by Plaintiff Brandenburg Telephone in this Court is a claim of breach of contract.
2. On February 12, 2008, Brandenburg Telephone filed a Small Claims Complaint with this Court. The complaint alleged: (i) that Ms. Stauffer and David Stauffer signed documents agreeing to be responsible for the account associated with the telephone number 270-496-4992 (the "4992 account"); (ii) that the telephone number 270-496-4992 was disconnected on May 30, 2007, at the request of David Stauffer; (iii) that \$228.37 remains owed on the 4992 account; and (iv) that Ms. Stauffer and David Stauffer are jointly and severally liable for the \$228.37 owed on the 4992 account. (AOC-175, Small Claims Complaint, and attachments.)

3. On March 11, 2008, Ms. Stauffer and her husband, Thomas D. Stauffer, filed a motion to dismiss Brandenburg Telephone's breach of contract claim (the "Motion") on behalf of both Defendants. In the Motion, Thomas Stauffer and Ms. Stauffer allege that the contract that Brandenburg Telephone seeks to enforce in this small claims action is "before the Kentucky Public Service Commission [the "Commission"] as a formal dispute, case #2007-00399" and that "it would be premature" for this Court to enter a judgment on the Defendants' debt. (Motion to Dismiss.)

4. Defendants further argue that, under 807 KAR 5:006(11), the bill for the 4992 account is considered "current" for purposes of this action. (*Id.*)

5. Defendants are mother and son. Thomas Stauffer is the husband of Ms. Stauffer and the father of David Stauffer.

Argument

6. The ground for dismissal cited by Defendants in the Motion is without merit. The Motion misstates the nature of the case before the Commission and misstates effect of 807 KAR 5:006(11).

7. Thomas Stauffer is the complainant in Commission Case No. 2007-00399. That case concerns billing for telephone number 270-496-4836, for which Thomas Stauffer is a responsible party.

8. The case immediately before this Court concerns a different account, the account associated with the telephone number 270-496-4992. Both Defendants are signatories and responsible parties for the 4992 account; Thomas Stauffer is not a signatory and not a responsible party for the 4992 account.

9. 807 KAR 5:006(11) prevents Brandenburg Telephone from terminating service to 270-496-4836 during the pendency of Commission Case No. 2007-00339, so long as undisputed amounts on that account are paid when due.

10. However, 807 KAR 5:006(11) has no effect upon the breach of contract claim pertaining to the 4992 account.

11. In fact, the question of Defendants' breach of contract concerning the 4992 account is not before the Commission and cannot be before the Commission.

12. Under the Kentucky Constitution, Kentucky statutes, and Kentucky case law, the Commission does not have, and cannot have, jurisdiction over a breach of contract claim. Rather, only a Kentucky court can have subject matter jurisdiction over this claim.

13. The Commission operates under the authority granted to it under KRS Chapter 278, which gives the Commission original jurisdiction only over "complaints as to rates or service of any utility." (KRS 278.260.)

14. Furthermore, Section 14 of the Kentucky Constitution establishes that the remedy for injury in Kentucky is judicial. Section 14 states: "All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

15. And, pursuant to the Kentucky Constitution, "[t]he judicial power of the Commonwealth shall be vested exclusively in one Court of Justice." (Kentucky Constitution § 109.) (Emphasis added.)

16. The Commission has specifically acknowledged its own limited jurisdiction. In an order issued on November 21, 2007 in Commission Case No. 2007-00399, the Commission held that, with respect to the language of KRS 278.260, "[n]o reference to awarding damages for wrongful conduct is made, nor can the authority to adjudicate such claims be reasonably inferred consistent with the Kentucky Constitution." (Order of the Commission, November 21, 2007, at 4, Case No. 2007-00399.)

17. The Small Claims Divisions of Kentucky's District Courts have "jurisdiction, concurrent with that of the District Court, in all civil actions ... when the amount of money or damages or the value of the personal property claimed does not exceed one thousand five hundred dollars (\$1,500) exclusive of interest and costs." (KRS 24A.230(1).) (Emphasis added).

18. In *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App. 1983), the Kentucky Court of Appeals held that "[n]owhere in Chapter 278 [is there] a delegation of power to the Commission to adjudicate contract claims for unliquidated damages" and added that it would not be "reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement." (*Id.* at 128.)

19. Defendants' final allegation in the Motion is that the Brandenburg Telephone Small Claims Complaint is "discriminatory" against the Stauffers because it does not name the third signatory on the 4992 account, Stacy M. Kelley, as a defendant. This claim is also without merit. A suit on contract is properly brought "against all or any of the parties who executed it." *S.L. Crook Corp. v. Blackburn for Use and Benefit of Stevens*, 87 S.W.2d 927, 928 (Ky. 1935). And, "[a] plaintiff can sue one, some, or all of the obligors." (Ronald W. Eades, *Kentucky Law of Damages* § 10:4 (2007).) Ms.

Stauffer and David Stauffer are responsible parties for the 4992 account and are, therefore, jointly and severally liable for the debt. They are both proper defendants herein.

20. Lastly, Plaintiff is concerned that, by filing the Motion on behalf of Defendants, Thomas Stauffer, who is neither an attorney nor a party to this action, has engaged in the practice of law before this Court. Pursuant to SCR 2.120, an individual is prohibited from practicing law in Kentucky unless he or she has been granted a certificate of admission to do so.

Conclusion

21. Under Kentucky law, the Commission has no jurisdiction over breach of contract claims. Jurisdiction over this matter lies solely and properly with this Court, and the matter is ripe for adjudication.

WHEREFORE, Plaintiff Brandenburg Telephone Company respectfully requests that Defendants' Motion to Dismiss be DENIED.

Respectfully submitted,

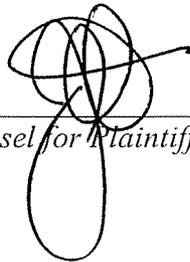


John E. Seent
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 540-2300
Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the above has been hand-delivered on this 3rd day of March, 2008, to the following:

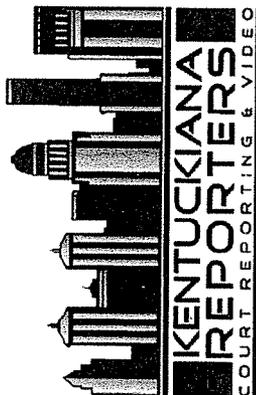
Ilissa L. Stauffer
David D. Stauffer
420 Blevins Road
Payneville, Kentucky 40157
Defendants



Counsel for Plaintiff

131016_1

502.589.2273 OFFICE
502.584.0119 FAX



The Starks Building, Suite 250
455 South 4th Street
Louisville, KY 40202

MEADE DISTRICT COURT
SMALL CLAIMS DIVISION

CASE NO. 08-S-049

BRANDENBURG TELEPHONE COMPANY

PLAINTIFF

vs.

ILISSA L. STAUFFER and

DAVID D. STAUFFER

DEFENDANTS

HEARING

TAPE TRANSCRIPTION

DATE:

MARCH 25, 2008

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

JOHN E. SELENT

DINSMORE & SHOHL LLP

1400 PNC Plaza

500 West Jefferson Street

Louisville, Kentucky 40202

Telephone: (502) 540-2300

Facsimile: (502) 540-2323

ALSO PRESENT:

ILISSA L. STAUFFER

DAVID D. STAUFFER

420 Blevins Road

Payneville, Kentucky 40157

THOMAS STAUFFER

ALLISON WILLOUGHBY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

JUDGE: Under the Fair Development Order --

MR. STAUFFER: I agree.

JUDGE: I can't, you know, I guess you should have brought a spare attorney. What is this, sir?

MR. STAUFFER: It's from her counselor.

JUDGE: Have you made copies for this gentleman?

MR. STAUFFER: I have a copy, yes.

JUDGE: Any documents that you provide to the court you need to have copied for the other side. Now --

MR. STAUFFER: They are fully aware of her condition.

MR. STAUFFER: Ilissa Stauffer and David Stauffer. Alright and so who are you, sir?

MR. STAUFFER: I am her husband and his father and I'm the only one who has a job. So any rulings made here that means that I'm the one that's going to pay for it. Plus, I've also been named in motions by the telephone company as the responsible party for this not in this case but the case before the Public Service Commission. And it's currently a



1 **JUDGE:** You were not. Alright. And are you
2 both Davids, sir? Your first name?

3 **MR. STAUFFER:** Thomas.

4 **JUDGE:** Thomas not David. Sorry. Alright
5 was your name on the account anywhere?

6 **MR. STAUFFER:** Never, not on that account.

7 **JUDGE:** Well, alright.

8 **MR. STAUFFER:** But I've been --

9 **JUDGE:** I assume you are a witness today
10 then?

11 **MR. STAUFFER:** I've been being billed for it.

12 **JUDGE:** In your name?

13 **MR. STAUFFER:** Mm-hum (affirmative).

14 **MS. STAUFFER:** Yes.

15 **JUDGE:** Okay. You're still not one of the
16 parties who has been -- you are not a party to the
17 action. And then so we've got the small claims
18 complaint alleging a bill in the amount of \$228.37 and
19 that's just for regular phone service; correct?

20 **MR. SELENT:** Local and long distance as I
21 understand it, Judge.

22 **JUDGE:** Okay. And then we have a
23 counterclaim filed by Ilissa Louise Stauffer on March
24 11th and I'm not sure it's for \$1,500.00 and then after
25 the counterclaim it's a motion to dismiss. And then

1 Commission?

2 **MR. STAUFFER:** A) they transferred the
3 balance to our account without, you know, to my account
4 and I'm not a responsible party. Then they threatened
5 to cut my phone off for a bill that I was not
6 responsible for. And under -- under the Public Service
7 Commissions Rules and Regulations they can't do that.

8 **JUDGE:** So you have a separate phone in your
9 name?

10 **MR. STAUFFER:** Its two different residences.
11 Yes, I have -- we have a phone in hers and in my name.
12 I tried to get my name put on top, but Brandenburg
13 telephone once they get one person's name on top they
14 don't change it ever. And the -- almost, you know, 20
15 some years that we've been here. But I mean -- I have
16 proof here that I am a signee on the account.

17 **JUDGE:** On the bill for which the small
18 claims case is filed?

19 **MR. STAUFFER:** For which the bill in which
20 the small claims is being billed to me, yes. They've
21 been billing me for it.

22 **JUDGE:** Well, I'm hearing you tell me that.
23 My question -- hold on just a minute, sir. I guess my
24 question was the two houses, two phone services --

25 **MR. STAUFFER:** Mm-hum (affirmative).

1 receiving the bill.

2 **JUDGE:** The telephone at your house, sir, Mr.
3 Thomas Stauffer, what's the last four digits on that?

4 **MR. STAUFFER:** 4836.

5 **JUDGE:** That's your identifying number; isn't
6 it 483. And you say that's in your name, Thomas? Is
7 it in anyone else's name?

8 **MR. STAUFFER:** It's in Ilissa's name. When
9 we first moved to Meade County she -- she made less
10 money than I did so she took off the day to go around
11 and set up utilities.

12 **JUDGE:** Okay. And the reason that the phone
13 was put in mother and son's name in the first place was
14 why Mr. Stauffer?

15 **DAVID STAUFFER:** I was moving into the house
16 that was there. I had not previously been -- they put
17 me as the primary on the account and she was originally
18 on the account. So, I was added as the primary since I
19 was moving into that residence.

20 **JUDGE:** You all have a second residence? I'm
21 taking all this information in and I haven't spoke to
22 anybody. I'm trying to figure out whether or not we
23 can actually do this today or whether or not there's a
24 claim and I just -- I guess really rather than me go
25 through all this I might as well swear everybody and

1 weren't Mr. Dinsmore or Mr. Shohl.

2 **MR. SELENT:** They have been for a while.

3 **JUDGE:** That would have been really
4 interesting --

5 **MR. SELENT:** It would've.

6 **JUDGE:** -- to get that accomplished. Alright
7 so here's what I'm going to do. Mr. Selent is
8 representing Brandenburg. They are the plaintiff so
9 they get to go first. I've kind of gotten a little bit
10 of information. That doesn't prevent you from going
11 ahead and putting in evidence just kind of get my
12 barings a little bit. This is just a little mixed up,
13 I guess. So do you care to call your witness?

14 **MR. SELENT:** Actually, I think I'll start
15 first with Ms. Stauffer if that's alright.

16 **JUDGE:** That will be fine. She's been sworn.

17 **DIRECT EXAMINATION OF ILISSA STAUFFER**

18 **BY MR. SELENT:**

19 **Q** Ms. Stauffer, do you have a copy of the
20 complaint that was filed by Brandenburg Telephone
21 Company in this matter? Could I show it to you if you
22 don't? May I?

23 **JUDGE:** He's going to have one Mr. Stauffer.

24 **MR. SELENT:** May I show it to her? May I?

25 **JUDGE:** Yes, you may.

1 Now, Mr. Selent, is not trying to harm you in anyway,
2 ma'am.

3 **WITNESS:** I don't know what he's showing me.
4 I haven't ever looked at it.

5 **JUDGE:** Well, look at it and when he shows it
6 to you and see if you can understand the questions he's
7 going to ask. If you don't know the answer to a
8 question just say I don't know.

9 **WITNESS:** Okay.

10 **JUDGE:** If you know the answer or if you
11 think you know you can say well, I think it's this.
12 Just say what you believe to be the truth on the matter
13 and we'll all be fine. None of us here are trying to
14 be unkind in anyway, but they have a right to ask the
15 questions.

16 **WITNESS:** Okay.

17 **JUDGE:** That doesn't prevent you from -- if
18 you're able to do business and to contract for services
19 then you have to be able to come here and respond. So
20 take your time and look at the document that the
21 gentleman is trying to show you, please.

22 **WITNESS:** Okay.

23 **Q** Ms. Stauffer, do you recognize this is the
24 small claims complaint which was filed against you in
25 this matter?

1 record.

2 **WITNESS:** I said no to the question.

3 **JUDGE:** You said no that was not your
4 signature?

5 **MR. SELENT:** His signature is not on there.
6 I'm just trying to --

7 **JUDGE:** Okay. Alright.

8 **MR. SELENT:** Sorry.

9 **Q** Do you recognize your signature on Exhibit 2
10 to the complaint?

11 **A** Yes, sir.

12 **Q** So you do recognize your name on Exhibit 2 to
13 the complaint as David Stauffer; is that correct?

14 **A** Yes, sir.

15 **Q** And do you understand that when you signed
16 Exhibit 2 to the complaint that you were going to pay
17 the charges associated with Liberty Bank and Telephone
18 Company services?

19 **A** Yes, sir.

20 **Q** Do you recognize your mother's signature as
21 also being on Exhibit 2 of the complaint?

22 **A** Yes, sir, I do.

23 **Q** Did she sign at the same time that you signed
24 the complaint? Excuse me. Did she sign Exhibit 2 at
25 the same time that you signed Exhibit 2?

1 one last time to Ms. Stauffer?

2 **JUDGE:** Sure.

3 **REDIRECT EXAMINATION OF MS. STAUFFER**

4 **BY MR. SELENT:**

5 **Q** Ms. Stauffer, do you know -- do you have any
6 reason to contest the amount owed to Brandenburg
7 Telephone Company pursuant to the complaint in the
8 amount of \$228.37?

9 **A** I knew there was a bill that my son owed. I
10 went in to make a payment after paying the past three
11 months on time and they told me I was in default and
12 they was going to shut my phone off. And I explained I
13 had made payments for the last three months and that's
14 when I found out they were taking my money and putting
15 it on my son's bill because I knew that his bill was
16 two hundred and something.

17 And when I asked the man to go back to see
18 what the original amount was he could not find it
19 because it had just blended in with ours and they were
20 taking all our money, at least those three months, and
21 paying on his bill and leaving ours high and dry. And
22 as you could tell by the signature on -- he demanded I
23 sign that paper to pay him the other \$50.00 which I do
24 not have. I had already paid it. They put me in
25 lockdown for three days because I hadn't paid it and I

1 Stauffer, I think is willing to kind of be
2 representative. He's not a party to this action. Do
3 you have a problem if he's the one that asks the
4 questions?

5 **MR. SELENT:** No, Your Honor.

6 **JUDGE:** No objection to that. Is that pretty
7 much what you wanted to do anyway isn't it? So that
8 will be fine. If you'd like to ask any questions of
9 Ms. Willoughby or your son or of your wife and you have
10 been sworn to so we can let you testify here as well.
11 First, why don't we -- if you have any questions of the
12 other party first would that be alright? Do you have
13 any questions about anything your wife said?

14 **MR. STAUFFER:** No.

15 **JUDGE:** Any questions about any testimony
16 that your son gave?

17 **MR. STAUFFER:** No.

18 **JUDGE:** What about any questions to Ms.
19 Willoughby?

20 **MR. STAUFFER:** No.

21 **JUDGE:** Alright. So you would like to give
22 some testimony at this point?

23 **MR. STAUFFER:** Yes.

24 **JUDGE:** Alright. Why don't you tell us what
25 your position is?

1 not a signee. I have here a copy of the latest -- the
2 last --

3 **JUDGE:** Is that a ticket?

4 **MR. STAUFFER:** That should be about the same
5 as yours. This is also shows Stacy Kelley. What she
6 was asking about was we went in -- she went in August
7 to pay our bill. I was working in Madison, Indiana so
8 I couldn't be here during business hours. So she went
9 in and handed them a \$30.00 check and they pulled her
10 aside and said they needed the \$90.00. Which she
11 talked about.

12 Here is the promissory note which they forced
13 her to sign. And I'd like you to look at her
14 signature. He's the one that provided that to me and
15 compare it to the other signature. I believe she is --
16 she is not competent to be held liable for a contract
17 if she doesn't understand it. We have medical proof.
18 We have --

19 **JUDGE:** Has she been declared to be disabled
20 by --

21 **MR. STAUFFER:** By a federal judge, yes.

22 **JUDGE:** No disabled for purposes of -- this
23 is she draws what social security or social security --

24 **MR. STAUFFER:** Disability.

25 **JUDGE:** Social Security Disability. Has she

1 **MR. STAUFFER:** Your Honor and I've got a copy
2 here with the exception of one page. I was printing
3 this off my computer and -- you're welcome to have
4 this.

5 **JUDGE:** I think I have a copy.

6 **MR. STAUFFER:** The Public Service Commission
7 is presently investigating this and they are
8 investigating wrong doing by the telephone company
9 involving this particular account.

10 **JUDGE:** Hold on just a second and let me make
11 sure. This letter from the therapist are you wanting
12 me to have copy of that in the file as well, sir?

13 **MR. STAUFFER:** Yes.

14 **MR. SELENT:** Could I look at it real quick.

15 **JUDGE:** I can make you one. Do you want this
16 original back, sir? This original back? And do you
17 want me to make a copy?

18 **MR. STAUFFER:** That would be nice.

19 **JUDGE:** Go ahead Mr. Stauffer. Sorry. I
20 just needed to get my exhibits in shape.

21 **MR. STAUFFER:** Okay. We do have a ruling
22 from the Public Service Commission stating that they
23 are retaining jurisdiction in this particular case.

24 **JUDGE:** Okay. Can you make a copy of this
25 one? Are there any other exhibits that you're going to

1 suppose to be considered current while the Public
2 Service Commission is reviewing it until they have made
3 a -- until they've had the hearing and make a final
4 ruling on it.

5 **JUDGE:** Have you -- have you got a copy of
6 your original claim file with the Public Service
7 Commission?

8 **MR. STAUFFER:** Yes, I do.

9 **JUDGE:** Does it have this account in it?

10 **MR. STAUFFER:** Yes, very much so.

11 **JUDGE:** And you know I guess I'm going to
12 show my ignorance here, but I don't do a lot of
13 practice with the Public Service Commission in fact I
14 never have so do they have the ability to declare an
15 account not due and owing?

16 **MR. SELENT:** Your Honor, they have --

17 **MR. STAUFFER:** We don't think so.

18 **MR. SELENT:** -- as a matter of fact the
19 Commission, itself, has acknowledged in an order issued
20 on November 21, 2007, which is in our response to the
21 Motion to Dismiss that no reference to award of damage
22 if wrongful conduct is made it's referring to KRS
23 Chapter 278 which creates the Public Service Commission
24 and grants it jurisdiction nor can afford to adjudicate
25 such claims to reasonably infer consistent with the

1 **MR. STAUFFER:** That was involving punitive
2 damages, not the bill. The Public Service Commission
3 is the one, the one and only, regulating company or
4 regulating --

5 **JUDGE:** Authority.

6 **MR. STAUFFER:** -- forgot the wording. Thank
7 you. Over public utilities. You see the thing with
8 public utilities is there is no competition especially
9 in rural areas like we are in. We don't have ten
10 million phone companies we have one choice which makes
11 them a monopoly. But under -- here's the original
12 complaint. I know I've got a copy of it.

13 **JUDGE:** You all have a copy of the complaint;
14 right? This is not my copy I need to make a copy of
15 it; is that right?

16 **MR. STAUFFER:** No, you can keep that.

17 **JUDGE:** Alright.

18 **MR. STAUFFER:** Also, he brought out in his
19 motion or his answer to my motion that I'm practicing
20 law or he fears that I'm practicing law. Okay.

21 **JUDGE:** We're not -- actually that's not the
22 issue we're talking about at this time. I haven't -- I
23 haven't granted either one of your motions to dismiss
24 or your motion to dismiss and I guess I didn't read all
25 of their motion quite frankly, that's the reason I was

1 **MR. STAUFFER:** Judge, that the ending date,
2 should have been the end of March. According to Public
3 Service Commission Rules and Regulations under 807 KAR
4 5006 Sec. 12 any party can cancel the service and they
5 are not liable for charges three days after that
6 cancellation. And we were there in person to do that
7 and they would not do it. So that's why partial of
8 that bill is not ours.

9 **JUDGE:** Okay. Was your son there too?

10 **MR. STAUFFER:** No.

11 **MS. STAUFFER:** No.

12 **JUDGE:** But he was -- he was named on the --

13 **MS. STAUFFER:** So was Stacy Kelley.

14 **JUDGE:** Can anyone tell me what that Stacy
15 Kelley, individually, means on there? How that got on
16 there? What that's about?

17 **MR. STAUFFER:** She would be a co-obligor too,
18 Your Honor. There would be three really co-obligors,
19 David Stauffer, Ilissa Stauffer and Ms. Kelley. They
20 were all three as I understand it be co-obligors for
21 services reached in the contract or the complaint, I'm
22 sorry.

23 **JUDGE:** Okay. Mr. -

24 **MR. SELENT:** I don't mean to interrupt at all
25 the presentation. We might want to have Ms. Willoughby

1 for review the bill is considered current. You don't
2 sue people for current charges. And you can't add
3 additional fees and stuff to it as well during that
4 time. It just sits there and waits until they make a
5 decision.

6 **JUDGE:** Alright. And have you gotten any
7 sort of information as to when they will be making a
8 decision?

9 **MR. STAUFFER:** No, ma'am.

10 **JUDGE:** Alright. And anything else Mr.
11 Stauffer?

12 **MR. STAUFFER:** Unless you want the whole file
13 from Commission?

14 **JUDGE:** No, no, no. Did you have some
15 questions you'd like to ask?

16 **MR. SELENT:** No, just with Ms. Willoughby,
17 one or two quick questions.

18 **JUDGE:** Sure.

19 **REDIRECT EXAMINATION OF MS. WILLOUGHBY**

20 **BY MR. SELENT:**

21 **Q** Ms. Willoughby, I'm going to show you a copy
22 of Exhibit 2 to the complaint of Brandenburg Telephone
23 Company in this matter. Do you recognize that
24 document, Exhibit 2?

25 **A** Yes.

1 we were relying on her reputation with the company.

2 And so because she had been a customer and had paid her
3 bill current we rely on her and I suppose that was the
4 reason she was present with her son.

5 **MS. STAUFFER:** May I?

6 **JUDGE:** Just a minute.

7 **Q** Would it be the company's normal practice to
8 release the co-obligor on an account under those
9 circumstances merely because they request to be
10 released?

11 **A** No, the account would have to be paid in full
12 and we would have to do a credit check or a credit
13 application on anyone who would be kept on the account.

14 **Q** In the event Ms. Stauffer was released would
15 it be likely that you would have assessed a deposit
16 against Mr. Stauffer on this account?

17 **A** Well, if that -- that would have been a
18 possibility based on an examination of his credit.

19 **Q** Is it your understanding the company is
20 obligated to release Ms. Stauffer or anyone who
21 requests to be released as a co-obligor on an account?

22 **A** We are if the account is -- we would if the
23 account is brought current, but absent the account
24 being brought current and an application being made in
25 the existing party's name we would not.

1 **A** Yes.

2 **Q** And the account that's named in this
3 complaint is for 4992 under the name of David and
4 Ilissa Stauffer; is that correct?

5 **A** Yes.

6 **JUDGE:** Mr. Stauffer any questions about that
7 testimony there?

8 **CROSS EXAMINATION**

9 **BY MR. STAUFFER:**

10 **Q** Yeah, then why does that balance appear on my
11 bill for 4836?

12 **A** The bill -- we transferred a bill to Ilissa
13 Stauffer to another bill to another account of Ilissa
14 Stauffer, you know, she is the obligor on both
15 accounts. And when the one service is disconnected in
16 her name and it was still outstanding and she still had
17 service -- she still had service with us we can
18 transfer that to keep up with what Ms. Stauffer owes
19 and that's what we did.

20 **JUDGE:** Hold on, sir. Anything else you want
21 to ask of her?

22 **Q** Why was I denied service because my wife
23 lives under my roof?

24 **A** Under the Public Service Commission
25 Regulations the phone company is not a -- a utility is

1 were going to be coming to me and they were coming to
2 my address while the account was active. And I called
3 the phone company over the phone because I did not have
4 means to pay back the, however much it was at the time,
5 and asked if I canceled the service to keep, you know,
6 the regular monthly bills from coming if I wouldn't,
7 you know, if that would give me the time to pay back
8 the bills on my own.

9 They gave me the impression that would be
10 okay. That if I canceled the service I would no longer
11 get regular monthly bills for, you know, having the
12 active service for paying 26 whatever or having the
13 phone in use, but I'd still have the bill and I would
14 be billed for the amounts that were due. Once they
15 canceled the service I waited for some paperwork
16 through the mail saying how much I owed, whatever. I
17 never received anything.

18 As a primary I would figure that they would
19 first come to me to get the money to be paid back and,
20 you know, if they couldn't get it through me they would
21 go to the other people on the contract. Once I
22 canceled the service I received nothing until the court
23 summons for this particular...

24 **JUDGE:** When you didn't get anything did you
25 go to the phone company and attempt to try and pay

1 because she couldn't answer.

2 So we put David's name on there because I
3 couldn't be there 24/7. I'd spend the day. He'd spend
4 the night and we were watching over his mother. And
5 she passed away in 2006. That was his grandparents'
6 phone number of 4992 ended up the two of us. But it
7 wasn't like a credit check. My name had been there
8 since 2001 taking care of his parents.

9 **JUDGE:** So what are you saying, ma'am?

10 **MS. STAUFFER:** I'm saying that they would
11 have no need to check on -- how she was saying they
12 didn't ask for a down payment or whatever because I had
13 -- phone number because of the medical issues.

14 **JUDGE:** You're disputing what she has said
15 about the fact that they didn't require a deposit
16 because of you're good credit is what you're saying?

17 **MS. STAUFFER:** Exactly.

18 **JUDGE:** Okay. Well, what you're saying is
19 that they still had two obligors on the account --

20 **MS. STAUFFER:** Yes, because when everyone
21 passed away, David's grandpa, --

22 **JUDGE:** And it left you and your son's name
23 on that.

24 **MS. STAUFFER:** Right.

25 **JUDGE:** Okay. Alright.

1 **JUDGE:** Collect the exhibits -- you've got
2 copies? I'll be glad to let you look at them.
3 Anything else, sir?

4 **MR. STAUFFER:** Not right at this time, no.

5 **JUDGE:** Sir, anything?

6 **DAVID STAUFFER:** Well, I was trying to get
7 across what is -- I didn't think they could transfer
8 the bill strictly being her without informing me of
9 something. I -- they still had my address. They had
10 all my information. The only thing I cut off was my
11 phone yet they never informed me that the bill was
12 switched over to her name and --

13 **JUDGE:** The bill is still in your name as
14 well. They are just sending it to your mother. And I
15 suspect, I mean I could be wrong, but I suspect that's
16 because they thought she was more likely to pay it.

17 **DAVID STAUFFER:** I thought they always had to
18 send it to the primary person?

19 **JUDGE:** I don't know what your contract
20 reads.

21 **MS. STAUFFER:** But then when they send the
22 bill it reads for 4836 not 4992.

23 **JUDGE:** Yes, I understand that's your beef
24 with this Public Service Commission, alright or with
25 them through the Public Service Commission isn't it?

1 to TARF so, unless they were to request one --

2 **JUDGE:** They wouldn't get one. Okay.

3 Alright. So anything else that you all have? Okay.

4 Anything else? Any other questions? Any other

5 evidence you want to put on?

6 **MR. SELENT:** I don't think so Your Honor.

7 The only two points I might make is that the contract

8 -- there's no primary or secondary I think in terms of

9 if you could vote. Whoever signs it you're liable.

10 **JUDGE:** Right.

11 **MR. SELENT:** There's no --

12 **JUDGE:** Any so -- go ahead.

13 **MR. SELENT:** And then secondly, you know, put

14 a lawyer in and he'll make it really complicated, I

15 know, we would move to dismiss the counterclaim on the

16 basis of (inaudible) Kentucky law.

17 **JUDGE:** And I'll look at that more closely as

18 I look at everything else. If there's nothing else

19 folks then I'm going to let you all be free to go.

20 Obviously, I won't rule on this today. I will take it

21 with me and in my spare time. I don't have a problem

22 with that. You all are -- you all are free to go. I

23 have your addresses so that I can make copies. So you

24 all are like I said free to go and you all have a good

25 afternoon.

CERTIFICATE OF REPORTER

COMMONWEALTH OF KENTUCKY AT LARGE

I do hereby certify that the witness in the foregoing transcript was taken on the date, and at the time and place set out on the Title page hereof, by me after first being duly sworn to testify the truth, the whole truth, and nothing but the truth; and that the said Matter was recorded by me and then reduced to typewritten form under my direction, and constitutes a true record of the transcript as taken, all to the best of my skill and ability. I certify that I am not a relative or employee of either counsel and that I am in no way interested financially, directly or indirectly, in this action.

MARLENA BOLIN, NOTARY

SUBMITTED ON MARCH 27, 2008

Kentuckiana Reporters
The Starks Building, Suite 250
455 South 4th Street
Louisville, KY 40202



502.589.2273 OFFICE
502.584.0119 FAX
depo@kentuckianareporters.com
www.KENTUCKIANAREPORTERS.com